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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 RICKY RAMIREZ

10 Plaintiff,

No. C06-1471Z

11 v.

ORDER

12 KING COUNTY, WASHINGTON and
13 OFFICER JEFF HANCOCK, and his
14 respective marital community, if any;

15 Defendants.

16 This matter comes before the Court on Defendants' Motion for Summary Judgment,
17 docket no. 13, by Defendants King County, Washington, and Officer Jeff Hancock, and
18 Plaintiff's Motion for Leave to Amend Complaint, docket no. 17, by Plaintiff Ricky
19 Ramirez. The Court having considered the parties' motions, responses, and replies, hereby
20 GRANTS Defendants' Motion for Partial Summary Judgment, docket no. 13, and GRANTS
21 Plaintiff's Motion for Leave to Amend Complaint, docket no. 17.

22 In 2004, Mr. Ramirez claims that while driving his motorcycle in Burien, Washington,
23 he noticed sirens behind him. Compl., docket no. 1, ¶ 7. When he stopped his motorcycle,
24 Officer Hancock hit his motorcycle with the patrol car, knocking him over. Id. Mr. Ramirez
25 was subsequently shot twice with a Taser gun. Id. Mr. Ramirez alleges he sustained
26 physical injuries on his leg, stomach, and chest, as a result of Officer Hancock's actions. Id.
He was subsequently charged with eluding a police officer, but was acquitted at trial. Id. ¶ 8.

1 As a result of what Mr. Ramirez contends was an unlawful stop, Mr. Ramirez asserts claims
2 in this Court violations of the United States Constitution, pursuant to 42 U.S.C. §§ 1981,
3 1983; violations of the Washington State Constitution; violation of RCW § 49.60.030;
4 assault and battery; false imprisonment; defamation and false light; infliction of emotional
5 distress; and negligent hiring, training, and supervision. See Compl., docket no. 1, at 3-5.

6 Defendant moves for partial summary judgment, and asks the Court to dismiss the
7 following claims: (1) all claims under the Fifth and Fourteenth Amendments to the United
8 States Constitution; (2) all claims brought under the Washington State Constitution; (3) the
9 claim brought under RCW 49.60.030; (4) the claim for negligent infliction of emotional
10 distress; (5) the claim for negligent hiring, training, and supervision; and (6) all claims for
11 punitive damages under Washington law and for such damages against King County under
12 42 U.S.C. § 1983. See Motion, docket no. 13, at 1.

13 Plaintiff does not oppose the motion for partial summary judgment, except as it relates
14 to Plaintiff's claim for negligent hiring, training, and supervision. See Response, docket no.
15 14, at 1. Accordingly, Defendants' Motion for Summary Judgment on all other claims is
16 therefore GRANTED; the Court will consider, on the merits, only Plaintiff's claim for
17 negligent hiring, training, and supervision.

18 **DISCUSSION**

19 Summary judgment is appropriate where there is no genuine issue of material fact and
20 the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The
21 moving party bears the initial burden of demonstrating the absence of a genuine issue of
22 material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party
23 has met this burden, the opposing party must show that there is a genuine issue of fact for
24 trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The
25 opposing party must present significant and probative evidence to support its claim or
26 defense. Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d 1551, 1558 (9th Cir.

1 1991). In order to defeat a motion for summary judgment, the non-moving party must make
2 more than conclusory allegations, speculations, or argumentative assertions that material
3 facts are in dispute. Wallis v. J.R. Simplot Co., 26 F.3d 885, 890 (9th Cir. 1994).

4 For purposes of these motions for summary judgment, reasonable doubts as to the
5 existence of material facts are resolved against the moving party and inferences are drawn in
6 the light most favorable to the opposing party. Addisu v. Fred Meyer, Inc., 198 F.3d 1130,
7 1134 (9th Cir. 2000). However, where no *factual* showing is made in opposition to a motion
8 for summary judgment, the District Court is not required to search the record *sua sponte* for
9 some genuine issue of material fact. See Carmen v. San Francisco Unified School Dist., 237
10 F.3d 1026, 1029 (9th Cir. 2001).

11 Under Washington law, claims for negligent hiring, training, and supervision are
12 otherwise improper where the employer concedes that the actions occurred within the course
13 and scope of employment. See Gilliam v. DSHS, 89 Wn.App. 569, 584-85 (1998); see also
14 Rodriguez v. Perez, 99 Wn.App. 439, 451 (2000). Defendants therefore ask the Court for
15 partial summary judgment on Plaintiff's claim for negligent hiring, training, and supervision.
16 Plaintiff does not dispute that a negligent hiring, training, and supervision claim is
17 inappropriate under State law.

18 However, Plaintiff contends that his claim for negligent hiring, training, and
19 supervision is actually a custom, practice, or policy claim against a municipal Defendant
20 brought pursuant to 42 U.S.C. § 1983. See Monell v. Department of Social Services of City
21 of New York, 436 U.S. 658 (1978). As plead, however, Plaintiff's claim is not a claim under
22 § 1983. Plaintiff's § 1983 claims are set forth in Count 1, while the claim for negligent
23 hiring, training, and supervision is in Count 7, among various other common law torts. The
24 Defendants note the difference between a common law negligent hiring, training, and
25 supervision claim, as compared to a Monell claim for municipal liability (i.e., municipal
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1 liability exists only where the municipality acts with “deliberate indifference” to the rights of
2 the Plaintiff). See City of Canton v. Harris, 489 U.S. 378, 390 (1989).

3 The Complaint does not allege a cause of action for municipal liability under § 1983.
4 Accordingly, the Court GRANTS the Defendant’s Motion for Summary Judgment, docket
5 no. 13. Plaintiff’s state law claim for negligent hiring, training, and supervision is improper
6 because King County has conceded that Officer Hancock’s actions were within the scope of
7 his employment.

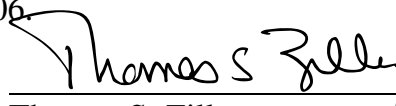
8 However, Plaintiff also seeks to amend his complaint to add a policy or custom claim
9 pursuant to § 1983, and to add the City of Burien as a Defendant. See Motion to Amend,
10 docket no. 17. Defendants allege that the delay weighs against allowing the amendment;
11 however, they concede that “the City would probably tender the case to King County and the
12 tender would likely be accepted” See Response, docket no. 18, at 6. Defendants do
13 allege, however, that the impact of adding the “policy and custom claim” would be
14 significant, and note that they will seek to bifurcate that claim from the individual claims.
15 See id. at 5-6. Notably, trial in this matter is set for May 27, 2008, and the Defendants do
16 not allege that any prejudice would result from granting the motion to amend. Rather,
17 Defendants only argument is that Plaintiff should have acted with more diligence. The Court
18 GRANTS the Motion to Amend, docket no. 17.

19 **CONCLUSION**

20 For the reasons stated in this Order, the Court GRANTS the Defendant’s Motion for
21 Partial Summary Judgment, docket no. 13. The Court GRANTS the Motion to Amend,
22 docket no. 17.

23 IT IS SO ORDERED.

24 DATED this 13th day of July, 2006

25 
26 Thomas S. Zilly
United States District Judge